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7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 DERIC METZGER, an individual, d/b/a  
DEM ER JEWELRY,

11 Plaintiff,

12 v.

13 TEMPLE OF THE ANCIENT DRAGON,  
14 INC., a Michigan corporation; TOM  
ERIK RASPOTNIK, an individual; and  
15 CINDY RASPOTNIK, an individual,

16 Defendants.  
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Case No. '16CV1299 WQH NLS

**COMPLAINT FOR:  
TRADEMARK INFRINGEMENT;  
FALSE DESIGNATION OF  
ORIGIN; COMMON LAW UNFAIR  
COMPETITION; STATUTORY  
UNFAIR COMPETITION;  
FEDERAL TRADEMARK  
DILUTION**

**DEMAND FOR JURY TRIAL**

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1 Plaintiff DERIC METZGER d/b/a DEMER JEWELRY (at times “Plaintiff”  
2 or “Metzger”)) for his claims for relief against Defendants TEMPLE OF THE  
3 ANCIENT DRAGON, INC., TOM ERIK RASPOSTNIK, and CINDY RESPOTNIK  
4 (collectively “Defendants”) alleges as follows:

5 **I. NATURE OF ACTION AND RELIEF SOUGHT**

6 1. Plaintiff Deric Metzger is a global leader in the design and manufacture  
7 of custom designed jewelry having won a significant number of awards for  
8 CAD/CAM related design.

9 2. Plaintiff Metzger has operated his jewelry design business under the  
10 fictitious business name DeMer Jewelry since January 2000.

11 3. Plaintiff Metzger is the owner of the trademark “DEMER,” as formally  
12 registered with the United States Patent and Trademark Office (“USPTO”) on  
13 September February 11, 2014, Serial Number 85974661, Registration Number  
14 4,480,782.

15 4. This action arises out of Defendants’ marketing, advertising and sale of  
16 goods in the custom jewelry field using the identical term “DEMER.” By  
17 advertising and marketing its goods under the “DEMER” name, Defendants have  
18 committed federal trademark infringement, false designation of origin, federal  
19 trademark dilution and unfair competition.

20 5. Furthermore, Defendants are in the regular practice of directly copying  
21 pictures and images of custom jewelry Plaintiff has undertaken hard work and labor  
22 to design and thereafter marketing for sale and offering the branded products for  
23 sale as their own, without so much as altering the picture or removing the  
24 identifying branding of “DEMER” from the image. As a result, Defendants’ use of  
25 “DEMER” constitutes willful trademark infringement and/or willful dilution of  
26 Plaintiff’s mark.

27 6. Prior to filing this action, Plaintiff notified Defendants of their  
28 ownership of the “DEMER” trademark rights and requested Defendant cease uses of

1 its practice of directly copying pictures and images of custom jewelry Plaintiff has  
2 designed, but Defendants have refused and to date continue to market and advertise  
3 pictures of product for sale with the “DEMER” mark as well as continuing to  
4 directly copy pictures and images of Plaintiff’s custom jewelry. As a result,  
5 Defendants’ use of “DEMER” constitutes willful trademark infringement and/or  
6 willful dilution of Plaintiff’s mark.

7 7. By filing this action, Plaintiff seeks provisional and permanent  
8 injunctive relief enjoining Defendants from any further marketing of itself or its  
9 products bearing the mark “DEMER,” enjoinder of Defendants’ practice of  
10 copying Plaintiff’s custom jewelry design and images to pass off as their own, and  
11 further seeks damages, including treble damages, resulting from Defendants’  
12 wrongful actions.

13 8. Plaintiff has filed for copyright registration on approximately two  
14 dozen jewelry designs that Defendants have infringed within the last twelve months  
15 and will amend this Complaint to include claims for relief under copyright law upon  
16 receiving registration numbers.

## 17 **II. JURISDICTION AND VENUE**

18 9. This Complaint arises under §§ 32, 43(a) and 43(c) of the Lanham Act,  
19 15 U.S.C. §§ 1114(1), 1125(a), and 1125(c), as amended, and the statutory and  
20 common laws of the State of California.

21 10. This Court has original subject matter jurisdiction over this action  
22 pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a). This Court has  
23 related claim jurisdiction over the state law tort claims pursuant to 28 U.S.C. §  
24 1338(b) and 28 U.S.C. § 1367.

25 11. This Court has specific jurisdiction over Defendants as their intentional  
26 acts intentionally directed at this jurisdiction and individuals in this jurisdiction  
27 including Plaintiff purposefully availed themselves to this jurisdiction, the claims  
28 arise out of forum-related activities, and the exercise of jurisdiction is reasonable.

1 On information and belief, Defendants conduct business within this forum to satisfy  
2 general jurisdiction. The business Defendants conduct includes advertising on the  
3 internet directed to this jurisdiction, sales within this jurisdiction, and commercial  
4 threats to Plaintiff within this jurisdiction.

5 12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)  
6 because a substantial part of the events or omissions giving rise to the claims  
7 occurred in this district and a substantial part of the property that is subject of the  
8 action is situated in this district.

### 9 **III. PARTIES**

10 13. Plaintiff Deric Metzger is an individual residing within this judicial  
11 jurisdiction. Plaintiff Metzger operates his business under the fictitious business  
12 name DeMer Jewelry operating out of Carlsbad, California.

13 14. Plaintiff is informed and believes, and on that basis alleges, that  
14 Defendant Temple Of The Ancient Dragon, Inc. is a corporation organized and  
15 existing under the law of the State of Michigan, with its principal place of business  
16 at 336 W First St, Ste 113, Flint, MI 48502. Plaintiff is further informed and  
17 believes, and on that basis alleges, that Defendant Temple Of The Ancient Dragon is  
18 doing business, marketing and advertising in the State of California, within this  
19 judicial district.

20 15. Plaintiff is informed and believes, and on that basis alleges, that  
21 Defendant Tom Erik Raspotnik is an individual residing in Flint, Michigan.  
22 Plaintiff is further informed and believes, and on that basis alleges, that Defendant  
23 Tom Erik Raspotnik is doing business, marketing and advertising in the State of  
24 California, within this judicial district.

25 16. Plaintiff is informed and believes, and on that basis alleges, that  
26 Defendant Cindy Rapotnik is an individual residing in Flint, Michigan. Plaintiff is  
27 further informed and believes, and on that basis alleges, that Defendant Cindy

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1 Raspotnik is doing business, marketing and advertising in the State of California,  
2 within this judicial district.

3 17. On information and belief Tom Erik Raspotnik and Cindy Raspotnik  
4 are married and together operate Temple Of The Ancient Dragon, Inc. for their own  
5 benefit.

#### 6 **IV. COMMON ALLEGATIONS FOR ALL CLAIMS**

7 18. Plaintiff has been involved in the jewelry industry since 1999. In total,  
8 Plaintiff holds the following degrees and industry recognition certificates: Graduate  
9 Gemologist, Graduate Jeweler, Graduate Jeweler Gemologist with Design and Wax,  
10 Applied Jewelry Arts, Advanced CAD/CAM, Diamond Extension, and Accredited  
11 Jewelry Professional degrees.

12 19. Plaintiff is an internationally-known leader in the design and  
13 manufacture of custom jewelry. Plaintiff advertises, markets and distributes  
14 products under the federally-registered and trademarked name “DEMER.” Plaintiff  
15 has spent significant time and expense developing extensive goodwill in its  
16 trademark within the industry and its clientele.

17 20. Plaintiff spends on average four days of work for each custom designed  
18 piece and on some pieces Plaintiff has spent months to ensure proper quality,  
19 design, and achieve the uniqueness that his clientele expects.

20 21. Plaintiff is the owner of an active federal trademark registration for the  
21 “DEMER” mark, Registration Number 4,480,782, registration date February 11,  
22 2014, as well as nationwide common law trademark rights for the “DEMER” mark.

23 22. Prior to the wrongful acts of Defendant complained herein, Plaintiff has  
24 for many years continuously marketed, advertised, and offered for sale, and sold, a  
25 variety of jewelry and jewelry products bearing the “DEMER” mark. Plaintiff also  
26 uses the “DEMER” mark to identify the corporate website and attract internet visits  
27 through search engines. Plaintiff’s “DEMER” mark has played a significant role in  
28 the corporation’s success.

1           23. Plaintiff markets and advertises his services and products in print,  
2 online and through other media. In its marketing and advertising, Plaintiff uses his  
3 trademark “DEMER” to attract and maintain clientele interested in custom jewelry.

4           24. Plaintiff’s “DEMER” mark, by virtue of its substantial use and  
5 promotion, has acquired great value as an identifier of Plaintiff’s products,  
6 distinguishing Plaintiff from other jewelry designers, manufacturers, and providers.

7           25. As a result of Plaintiff’s extensive advertising, it is readily recognized  
8 in the industry and distinguished from other jewelry designers, manufacturers, and  
9 providers by the “DEMER” trademark.

10           26. Plaintiff expends great time, energy and cost designing unique and  
11 custom jewelry to offer for sale to the public. Plaintiff advertises the custom  
12 jewelry for sale on his website, Facebook, Twitter, Etsy, and various other social  
13 media accounts. Plaintiff’s advertisements are often, if not always, accompanied by  
14 a picture of the product for sale which often the “DEMER” mark branded directly  
15 upon or in the jewelry.

16           27. As stated, Plaintiff’s products are not inexpensive costume jewelry but  
17 instead are unique pieces he expends significant time and energy designing. The  
18 prices generally range from several thousand dollars per piece to over ten thousand  
19 dollars per piece. The expense of Plaintiff’s products is a result of both the quality  
20 and the goodwill built up within the industry.

21           28. Plaintiff is informed and believes, and on that basis alleges, that in  
22 2014, Defendants began directly lifting images of Plaintiff’s custom works from his  
23 online advertising and offering for sale Plaintiff’s products, or unauthorized knock-  
24 offs of Plaintiff’s products and designs, through the online media accounts of  
25 Temple of the Ancient Dragon, Tom Erik Raspotnik, and Cindy Raspotnik.

26           29. Plaintiff is informed and believes, and on that basis alleges, that the  
27 images Defendants have used to sell jewelry are exact copies of images Plaintiff has  
28 previously posted of his custom designs. Often, the images Defendant uses contains

1 the federally-registered “DEMER” mark despite Defendants having no connection  
 2 to Plaintiff or his business. Defendants use of Plaintiff’s designs and the “DEMER”  
 3 mark has occurred under the unique social media and advertising pages of each  
 4 Defendant.

5 30. The infringement of Plaintiff’s designs and trademarks by Defendants  
 6 is rampant. The following three examples are illustrations of the more than dozens  
 7 of cases of infringement Plaintiff has uncovered:

- 8 a. Exhibit A is a picture of Plaintiff’s piece styled Celtic, European, solid  
 9 18 kt, 2-tone and diamond large supernatural pentagram pendant for  
 10 sale for \$3,470 on the DeMer Jewelry Website. The piece contains the  
 11 trademark “DEMER” on the clasp. Also on Exhibit A is the exact  
 12 same picture, containing the trademark “DEMER” on the clasp, for sale  
 13 on Defendants’ “youshop” website for sale for \$499.99, alleging that it  
 14 is custom made. Defendants copied the picture, design, and trademark  
 15 without authorization.
- 16 b. Exhibit B is a picture of Plaintiff’s piece styled Underworld Lucian’s  
 17 Amulet Revised for sale for \$5,064 on the DeMer Jewelry Website.  
 18 Also on Exhibit B is the exact same picture and design from Defendant  
 19 Tom Erik Raspotnik’s Facebook Page for sale for \$5,900. Defendants  
 20 copied the picture and design without authorization.
- 21 c. Exhibit C is a picture of Plaintiff’s piece styled Dracula Voivode Black  
 22 Cross 14kt Heavy Gold European Gold Skull for sale for \$1,935 on the  
 23 DeMer Jewelry Etsy website. Also on Exhibit C is the exact same  
 24 picture and design from Defendant’s “youshop” website for sale for  
 25 \$239.99. Defendants copied the picture and design without  
 26 authorization.

27 31. Plaintiff has contacted Defendant Tom Erik Raspotnik multiple times  
 28 and requested that he ceases and desists from using Plaintiff’s images, custom

1 designs, and other marks, but Defendant has ignored Plaintiff's requests and has  
2 instead continued to infringe upon Plaintiff's rights.

3 32. In fact, Defendant Tom Erik Respotnik has acknowledged the use of  
4 Plaintiff's designs but has claimed that he is legally-entitled to use the images,  
5 marks, and designs to produce products for his benefit and the benefit of the other  
6 defendants.

7 33. Plaintiff is informed and believes, and on that basis alleges, that  
8 Defendants' continued use of the mark "DEMER" in marketing and advertising is  
9 designed to cause confusion, mistake, or deception amongst consumers and the  
10 industry, and lead to increased activity on Defendants' websites based upon  
11 Plaintiff's goodwill.

12 34. By virtue of their acts and conduct alleged above, Defendants have  
13 created injury to Plaintiff's business, caused by a likelihood of confusion as to the  
14 source of origin and sponsorship of Defendants' goods and have otherwise  
15 competed unfairly with Plaintiff. Such likelihood of confusion includes but is not  
16 limited to confusion of consumers and the general public that Defendants' products,  
17 which are copies of Plaintiff's images and advertised using the "DEMER" mark are  
18 somehow connected with Plaintiff and his brand.

19 35. Plaintiff has filed for copyright protection with the United States  
20 Copyright Office for protection of more than one dozen of its designs that have been  
21 infringed upon and fabricated by Defendants. Upon receipt of the registration  
22 numbers, Plaintiff will amend this Complaint to include claims of relief for  
23 protection under the copyright regime.

24 36. Defendants acts and conduct alleged above have caused damage and  
25 irreparable injury to Plaintiff in an amount to be determined at trial. Said acts and  
26 conduct will result in further damage and irreparable injury to Plaintiff if Defendants  
27 are not restrained by this Court from further violation of Plaintiff's rights, for which  
28 Plaintiff has no remedy at law.

## V. CLAIMS FOR RELIEF

## FIRST CLAIM FOR TRADEMARK INFRINGEMENT

37. The allegations of the preceding paragraphs are repeated and re-alleged as though set forth fully herein.

38. This is a claim for trademark infringement pursuant to 15 U.S.C. § 1051 et seq.

39. Plaintiff is informed and believes, and on that basis alleges that Defendants' use in interstate commerce of the mark "DEMER" on its website, in its marketing, in its advertisements, and on its products is likely to cause confusion, to cause mistake or to deceive customers as to the affiliation, connection or association with the "DEMER" trademark of Plaintiff. By the foregoing acts, and continued use of the "DEMER" mark, Defendants have infringed Plaintiff's federally-registered "DEMER" trademark in violation of 15 U.S.C. § 1114.

40. Plaintiff is informed and believes, and on that basis alleges, that Defendants have acted willfully, with intent to trade upon the goodwill and reputation of Plaintiff, and with the intent to cause confusion, to cause mistake or to deceive consumers.

41. Plaintiff is entitled to all of the remedies available under the Lanham Act, including actual damages, and an accounting of Defendants' profits, treble damages, costs and attorneys' fees.

42. Defendants' acts, as alleged above, have caused damage and irreparable injury to Plaintiff in an amount to be determined at trial. Said acts will result in further damage and irreparable injury to Plaintiff if Defendants are not restrained by this Court from further violation of Plaintiff's rights, for which Plaintiff has no adequate remedy at law.

## SECOND CLAIM FOR FALSE DESIGNATION OF ORIGIN

43. The allegations of the preceding paragraphs are repeated and re-alleged as though set forth fully herein.

1           44. This is a claim for false designation of origin under 15 U.S.C. §  
2 1125(a).

3           45. Plaintiff is informed and believes, and on that basis alleges, that  
4 Defendants' use in interstate commerce of the mark "DEMER" to market and sell  
5 services and products constitutes a false designation of origin, and a false  
6 description or representation of goods, tending wrongfully and falsely to describe or  
7 represent a connection between Plaintiff's goods and Defendants' goods and  
8 services. By these acts, Defendants have infringed Plaintiff's federally-registered  
9 and common-law trademark in violation of 15 U.S.C. § 1125(a).

10           46. Defendants' activities are likely to lead the public to conclude  
11 incorrectly that Defendants' products and services are produced or otherwise  
12 associated with Plaintiff or his products or brand to the harm of Plaintiff and  
13 consumers.

14           47. Plaintiff is informed and believes, and on that basis alleges, that  
15 Defendants have acted willfully, with the intent to trade upon the goodwill and  
16 reputation of Plaintiff, and with the intent to cause confusion, to cause mistake or to  
17 deceive customers.

18           48. Plaintiff is entitled to all of the remedies available under the Lanham  
19 Act, including actual damages and an accounting of Defendants' profits, treble  
20 damages, costs and attorneys' fees.

21           49. Defendants' acts, as alleged above, have caused irreparable injury to  
22 Plaintiff in an amount to be determined at trial. Said acts will result in further  
23 damage and irreparable injury to Plaintiff if Defendants are not restrained by this  
24 Court from further violation of Plaintiff's rights, for which Plaintiff has no adequate  
25 remedy at law.

26           **THIRD CLAIM FOR STATUTORY UNFAIR COMPETITION**

27           50. The allegations of the preceding paragraphs are repeated and re-alleged  
28 as though set forth fully herein.

1           51. This is a claim for unfair competition arising under CAL. BUS. &  
2 PROF. CODE § 1720 *et seq.*

3           52. By reason of the foregoing acts, Defendants have intentionally caused a  
4 likelihood of confusion among the public or have misled or deceived the public and  
5 have thus unfairly competed with Plaintiffs in violation of CAL. BUS. & PROF.  
6 CODE § 1720 *et seq.*

7           53. Plaintiff is entitled to all remedies available under CAL. BUS. &  
8 PROF. CODE § 1720 including restitution, disgorgement, and injunctive relief.

9           54. By reason of Defendants' actions, Defendants have irreparably injured  
10 Plaintiff and the consumer recognition and goodwill associated with Plaintiff's  
11 products, and such injury will continue unless enjoined by this Court.

12           **FOURTH CLAIM FOR COMMON LAW UNFAIR COMPETITION**

13           55. The allegations of preceding paragraphs are repeated and re-alleged as  
14 though set forth fully herein.

15           56. This is a claim for common law unfair competition under the common  
16 law of the State of California.

17           57. By reason of the foregoing acts, Defendants have unfairly competed  
18 with Plaintiff in violation of the common law of the State of California.

19           58. Defendants' acts, as alleged above, have caused damage and irreparable  
20 injury to Plaintiff in an amount to be determined at trial. Said acts will result in  
21 further damage and irreparable injury to Plaintiff if Defendants are not restrained by  
22 this Court from further violation of Plaintiff's rights, for which Plaintiff has no  
23 adequate remedy at law.

24           **FIFTH CLAIM FOR TRADEMARK DILUTION**

25           59. The allegations of the preceding paragraphs are repeated and re-alleged  
26 as though set forth fully herein.

27           60. This is a claim for trademark infringement dilution to 15 U.S.C. §  
28 1125(c).

61. Based on Plaintiff's extensive advertising, promotion and marketing, Plaintiff's federally-registered "DEMER" mark has become widely recognized by the consuming public of the United States as a designation of the source of products and services provided by Plaintiff.

62. Plaintiff's federally-registered "DEMER" mark became famous prior to Defendants' use of the identical mark in marketing, advertising and on its websites.

63. Defendants' use of the mark "DEMER" is likely to cause dilution by blurring, creating a likelihood of association between Plaintiff's famous "DEMER" mark and Defendants' products advertised bearing the "DEMER" mark.

64. Defendants' use of the mark "DEMER" is likely to impair the distinctiveness of Plaintiff's "DEMER" mark.

65. In violation of 15 U.S.C. § 1125(c), Defendants willfully intended to trade upon or harm the recognition and reputation of Plaintiff.

66. Plaintiff is entitled to all of the remedies available under the Lanham Act, including injunctive relief, an accounting of Defendant's profits, treble damages, costs and attorney's fees.

## **VI. PRAYER FOR JUDGMENT**

WHEREFORE, Plaintiff Deric Metzger prays for judgment jointly and severally against Defendants as follows:

### **First Claim of Relief**

1. That Plaintiff's "DEMER" mark be deemed valid and willfully infringed by Defendants in violation of 15 U.S.C. § 1114 *et seq.*;

2. That Defendants be required to account to Plaintiff for any and all profits derived by it by reason of Defendants' acts complained herein;

3. The Defendants be ordered to pay to Plaintiff all damages which it has sustained as a consequence of the acts complained herein, subject to proof at trial;

4. That such damages and profits be trebled and awarded to Plaintiff pursuant to 15 U.S.C. § 1117;

1           5.     That Defendants be ordered to pay to Plaintiff attorney's fees and costs;  
2 and

3           6.     That Defendants, their agents, servants, employees and attorneys, and  
4 all those persons in active concert or participation with them, be forthwith  
5 preliminarily and thereafter permanently enjoined, pursuant to 15 U.S.C. § 1116,  
6 from:

- 7           a.     Manufacturing, selling distributing, marketing, advertising, licensing or  
8                 authorizing the manufacture or sale of any products or marketing and  
9                 advertising materials bearing the mark "DEMER";  
10          b.     Otherwise infringing Plaintiff's trademark rights; and  
11          c.     Causing a likelihood of confusion in the public as to the source or  
12                 endorsement of Defendants' products.

13                                 **Second Claim of Relief**

14          1.     That Defendants be adjudged to have violated the provisions of 15  
15 U.S.C. § 1125(a) by falsely designating the origin of their products;

16          2.     That Defendants be required to account to Plaintiff for any and all  
17 profits derived by it by reason of Defendants' acts complained herein;

18          3.     The Defendants be ordered to pay to Plaintiff all damages which it has  
19 sustained as a consequence of the acts complained herein, subject to proof at trial;

20          4.     That such damages and profits be trebled and awarded to Plaintiff  
21 pursuant to 15 U.S.C. § 1117;

22          5.     That Defendants be ordered to pay to Plaintiff attorney's fees and costs;  
23 and

24          6.     That Defendants, their agents, servants, employees and attorneys, and  
25 all those persons in active concert or participation with them, be forthwith  
26 preliminarily and thereafter permanently enjoined, pursuant to 15 U.S.C. § 1116,  
27 from:

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- a. Manufacturing, selling distributing, marketing, advertising, licensing or authorizing the manufacture or sale of any products or marketing and advertising materials bearing the mark “DEMER”;
- b. Otherwise infringing Plaintiff’s trademark rights;
- c. Falsely designating the origin of Defendants’ products and services; and
- d. Causing a likelihood of confusion in the public as to the source or endorsement of Defendants’ products.

**Third Claim of Relief**

1. That Defendants be adjudged to have unfairly competed with Plaintiff under CAL. BUS. & PROF. CODE § 1720 *et seq.*;
2. That Defendants be required to account to Plaintiff for any and all profits derived by it by reason of Defendant’s acts complained herein;
3. The Defendants be ordered to pay to Plaintiff restitution to restore Plaintiff any lost profits and to deter future misconduct by Defendants;
4. That Defendants be ordered to pay to Plaintiff attorney’s fees and costs; and
5. That Defendants, their agents, servants, employees and attorneys, and all those persons in active concert or participation with them, be forthwith preliminarily and thereafter permanently enjoined, pursuant to CAL. BUS. & PROF. CODE § 1720 *et seq.*, from:
  - a. Manufacturing, selling distributing, marketing, advertising, licensing or authorizing the manufacture or sale of any products or marketing and advertising materials bearing the mark “DEMER”;
  - b. Otherwise infringing Plaintiff’s trademark rights; and
  - c. Causing a likelihood of confusion in the public as to the source or endorsement of Defendants’ products.

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**Fourth Claim of Relief**

1. That Defendants be adjudged to have unfairly competed with Plaintiff under the common law of the State of California;

2. That Defendants be required to account to Plaintiff for any and all profits derived by it by reason of Defendants' acts complained herein;

3. The Defendants be ordered to pay to Plaintiff all damages which Plaintiff has sustained as a consequence of the acts complained of herein, subject to proof at trial;

4. That Defendants be ordered to pay to Plaintiff's attorney's fees and costs; and

5. That Plaintiff recovers punitive damages pursuant to CAL. CIVIL CODE § 3294.

**Fifth Claim of Relief**

1. That Defendants be adjudged to have violated the provisions of 15 U.S.C. § 1125(c) by diluting the value of Plaintiff's trademark;

2. That Defendant be required to account to Plaintiff for any and all profits derived by it by reason of Defendant's acts complained herein;

3. The Defendant be ordered to pay to Plaintiff all damages which he has sustained as a consequence of the acts complained herein, subject to proof at trial;

4. That Defendant be ordered to pay to Plaintiff attorney's fees and costs; and

5. That Defendants, their agents, servants, employees and attorneys, and all those persons in active concert or participation with them, be forthwith preliminarily and thereafter permanently enjoined, pursuant to 15 U.S.C. § 1125(c), from:

- a. Manufacturing, selling distributing, marketing, advertising, licensing or authorizing the manufacture or sale of any products or marketing and advertising materials bearing the mark

1 “DEMER”; and

2 b. Otherwise infringing Plaintiff’s trademark rights.

3 **On All Claims of Relief**

4 1. That Defendants be directed to file with this Court and serve on  
5 Plaintiff within thirty (30) days after the service of any injunction a report in  
6 writing, under oath, setting forth in detail the manner and form in which Defendant  
7 has complied with such injunction;

8 2. For \$500,000 in general damages;

9 3. That Plaintiff be awarded his costs, attorneys’ fees and expenses in this  
10 suit under 15 U.S.C. § 1117, CAL. BUS. & PROF. CODE § 1720 *et seq.*, and as  
11 otherwise provide by law; and

12 4. That the Court award such other and further relief as it may deem just.

13  
14 Dated: May 31, 2016

SMALL & SCHENA LLP

15  
16 By: s/ John Schena

17 John Schena, Esq.

18 Attorneys for Plaintiff Deric Metzger  
19  
20

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff Deric Metzger. hereby demands trial by jury in this action.

23 Dated: May 31, 2016

SMALL & SCHENA LLP

24  
25 By: s/ John Schena

26 John Schena, Esq.

27 Attorneys for Plaintiff Deric Metzger  
28